

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PEITION NO.2779 OF 2006

Santprasad Patiraj Singh.	...Petitioner.
Versus	
Bharat Textile Mills & Ors.	...Respondents.

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Mr. R. S. Upadhyay for the Petitioner.
Mrs.Meena Doshi for the Respondents.

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CORAM : DR. D.Y. CHANDRACHUD, J.

November 27, 2006.

P.C.:

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The Petitioner was initially a badli workman engaged in the Podar Mills (Process House) and was thereafter transferred to Bharat Textile Mills from 11th April 1991. The Petitioner became a permanent workman on and from 1st April 2003. In response to a Modified

Voluntary Retirement Scheme (MVRS) announced by the National Textile Corporation, the Petitioner submitted his application on 10th October 2003 and applied for voluntary retirement. The Petitioner was paid an amount of Rs.1,56,962/- towards his dues under the MVRS. The Petitioner moved an application under Section 33C-2 of the Industrial Disputes Act, 1947 claiming that he was entitled to an amount of Rs.2,23,807/-. The application was dismissed by the Labour Court by an order dated 19th December 2005 which is impugned in these proceedings.

3. In challenging the judgment of the Labour Court, two submissions have been urged in these proceedings. Firstly, it has been submitted that under the MVRS, no distinction could have been made in computing the benefits to which the Petitioner was entitled for the period that he had worked as a badli workman. Secondly, it is urged that the management had put up a notice on 9th October 2003 by which workers were informed that they would be entitled to 70 days wages for every completed year of service and to a benefit of 50 days for each remaining year of service. The submission is that it was

with reference to the notice dated 9th October 2003 that the Petitioner submitted his resignation on 10th October 2003 and that consequently the benefits which were payable to the Petitioner ought to have been computed on that basis.

4. The Labour Court which entertained and decided the Petitioner's application under Section 33C-2, had before it documentary material, including the application submitted by the Petitioner and a calculation sheet of wages prepared on behalf of the First Respondent. The Labour Court held that under the MVRS, employees were to be paid ex-gratia equivalent to 35 days for every completed year of service and 25 days for the balance of the service left until superannuation. As a matter of fact, the Labour Court held that the alleged notice dated 9th October 2003 which was at variance with the MVRS does not appear to have been displayed at all. Moreover, since the Mill was closed, the Petitioner would have otherwise been entitled only to get legal dues and closure compensation. The Labour Court dismissed the application holding that there is no existing right for filing an application under Section

33C-2. In the event that the case of the Petitioner was that he had been induced to submit his resignation on the basis of a misrepresentation, the Labour Court held that this would have to be adjudicated upon in a substantive reference and therefore, an application under Section 33C-2 was not maintainable.

5. Proceedings under Section 33C-2 are in the nature of proceedings in execution and the Labour Court applied the correct test in that it scrutinized whether the Petitioner had any existing right. On behalf of the First Respondent, the attention of the Court has been drawn to the fact that the scheme for voluntary retirement that was originally propounded in the year 1992 or thereabout was only for regular and permanent employees of NTC who were eligible to opt for voluntary retirement. Subsequently, it was realised that there were a large number of badli workmen and in order to ensure that the object of the scheme was fulfilled, it would be necessary to bring badli workmen under the scope of voluntary retirement. On 14th August 1997, a circular was issued by the Divisional Office of NTC (South Maharashtra) recording that in order to accelerate the implementation

of the Voluntary Retirement Scheme, the Holding Company had issued certain directives for immediate implementation. Badli workers were entitled to VRS compensation subject to their fulfillment of attendance of 240 days each year. To accelerate the pace of VRS the Holding Company had decided that badli workmen may be offered proportionate compensation for a year during which they had put in less than 240 days of attendance in proportion to their attendance to 240 days. The circular also provided that the criteria of proportionate compensation would also apply to permanent employees for the badli period served by them prior to the attainment of permanency.

6. The Modified Voluntary Retirement Scheme came to be issued in January 2002 and was annexed to the registered agreement that was entered into with the Rashtriya Mill Mazdoor Sangh, the recognised Union, on 16th February 2002. The First Respondent has stated in its affidavit that the settlement and the scheme came to be filed before BIFR which was seized of the application of the National Textile Corporation for rehabilitating the mills. Clause 3.1.1 of the Modified Voluntary Retirement Scheme inter alia provided for the

following benefits:

“3.1.1 Ex-gratia payment equivalent to 35 days for every completed year of service and 25 days for the balance of service left until superannuation. The compensation will be subject to a minimum of Rs.25,000/- or 250 days salary whichever is higher. However, this compensation shall not exceed the sum of the salary that the employee would draw at the prevailing level for the balance of the period left before superannuation.”

An additional ex-gratia compensation was provided for in clause 3.1.2 which is not in issue in these proceedings. Clause 3.1.7, however, stipulated that in the case of Badli workers, compensation will be paid of 35 days for every completed year and 25 days for the remaining service irrespective of minimum requirement of 240 days service in a year (as in the case of permanent employees) once their names are borne on the muster roll of the Mill.

7. On 10th September 2003, a notice was put up by the First Respondent inviting applications for VRS and clause 8 of the notice stipulated that a substitute workman should work at least 30 days in a year to receive the benefit of ex-gratia. Subsequently, on 26th September 2003 another notice was put up by which clause 8 was

modified and the modified condition which was provided was that the method of calculating the period of Badli work of workmen will be according to the previously given VRS. The modification of clause 8 has been challenged in complaints of unfair labour practices filed by the RMMS before the Industrial Court. Those two complaints, Complaint (ULP) 652 and 653 of 2003 are pending. By an order dated 21st October 2003, the Industrial Court dismissed an application for interim relief holding that the Corporation may process the applications for voluntary retirement received under the MVRS and the employees may accept their dues without prejudice to their right to claim further amounts as prayed in the complaints.

8. There is substance in the finding recorded by the Labour Court that the nature of the grievance that was raised on behalf of the Petitioner would require a substantive adjudication in a reference under Section 10 of the Industrial Disputes Act, 1947 and would not fall within scope and purview of proceedings under Section 33C-2. The Petitioner is a badli workman who was confirmed on 1st April 2003. NTC has stated before the Court that as many as 2988

employees were granted voluntary retirement under the MVRS under the National Textile Corporation (North Maharashtra) Ltd. whereas 5759 employees received VRS under the National Textile Corporation (South Maharashtra) Ltd. A total amount of Rs. 148.17 crores and Rs. 264.30 crores has been disbursed by the two Companies. In the affidavit in reply it has been stated that the principle of computing MVRS benefits in respect of badli workers was different for the badli period and after the period they become permanent. It has also been stated in the affidavit that this practice has been uniformly followed in all the applications filed under MVRS. It cannot be said that the Petitioner had a pre-existing right to claim at the rate of 70 days for past service and 50 days for the remaining period, which could form the subject matter of a proceeding under Section 33C-2. The Petitioner has been paid his dues by NTC and this calculation was on the same uniform basis as applied to other badli workers who became permanent.

9. The contention that by a notice dated 9th October 2003 the benefits that were offered under the MVRS were increased to 70 days

wages of each completed year of service and 50 days for the remaining years of service cannot be accepted for more than one reason. For one thing, the First Respondent in the affidavit in reply has specifically denied that any such notice was put up. The witness who deposed on behalf of the First Respondent also specifically deposed that in the MVRS a workman is entitled to 35 days wages for each completed period of service and 25 days for the remaining period of service. The MVRS was a part of a negotiated settlement and is annexed to the agreement of 10th February 2003 with RMMS which is a recognised union. The contention of the Petitioner that by a simple notice put up on the notice board, the terms of the scheme that was part of a registered agreement with the recognised Union were modified, cannot be accepted. In any event, the Labour Court has fairly observed that in case the Petitioner alleges that he was induced to submit his resignation on the basis of a misrepresentation, proceedings under Section 33C-2 would not be an appropriate remedy and it would be necessary for the Petitioner to seek recourse to his remedies in the form of a substantive adjudication.

10. In the circumstances no case of interference under Article 226 of the Constitution is made out.

11. The petition is dismissed.

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